

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

CHARLES BREAU,

Plaintiff,

v.

CONN APPLIANCES, INC.,

Defendant.

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CAUSE NO. 4:14-cv-1045-O

ORIGINAL ANSWER OF DEFENDANT CONN APPLIANCES, INC.

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendant Conn Appliances, Inc. (“Defendant”) files this Original Answer to Plaintiff’s Complaint (the “Complaint”) filed by Charles Breau (“Plaintiff”) and states as follows:

I.
NATURE OF THE ACTION

1. Defendant admits that Plaintiff asserts a claim under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et seq.* Defendant denies that it violated the statute referenced and/or that Plaintiff is entitled to the recovery sought as alleged in Paragraph 1 of Plaintiff’s Complaint.

II.
JURISDICTION

2. Defendant denies this Court has proper jurisdiction as alleged in Paragraph 2 because Plaintiff’s contract with Defendant contains a binding arbitration clause. Defendant admits it conducts business in the Northern District of Texas, and that venue for arbitration may be proper in the area, but denies the remaining allegations in Paragraph 2 of the Complaint.

III.
PARTIES

3. Defendant admits Plaintiff is an individual, but lacks sufficient information at this time to form a belief regarding the remaining allegations contained in Paragraph 3 of the Complaint and therefore, denies the remaining allegations.

4. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

V.
FACTUAL ALLEGATIONS

5. Defendant admits that it called Plaintiff at 469-xxx-3138 which he listed as his home number using a telephone system that has the capacity to store telephone numbers that are input daily through human intervention. Defendant denies the remaining allegations contained in Paragraph 5 of the Complaint.

6. Defendant lacks sufficient information at this time to form a belief regarding the allegations contained in Paragraph 6 of the Complaint and therefore denies same.

7. Defendant lacks sufficient information at this time to form a belief regarding Plaintiff's knowledge and denies the remaining allegations contained in Paragraph 7 of the Complaint.

8. Defendant denies the allegations contained in Paragraph 8 of the Complaint.

9. Defendant denies the allegations contained in Paragraph 9 of the Complaint.

10. Defendant denies the allegations contained in Paragraph 10 of the Complaint.

VI.
COUNT I
47 U.S.C. 227

11. Paragraph 11 of the Complaint repeats and re-alleges all previous factual allegations in the preceding 10 paragraphs and such allegations have been addressed previously. To the extent a response is required to Paragraph 11, Defendant repeats and re-asserts all

responses to Paragraphs 1-10 of the Complaint.

12. Defendant admits that it uses a telephone system that has the capacity to store telephone numbers that are input daily through human intervention, but Defendant lacks sufficient information at this time to form a belief regarding the allegations contained in Paragraph 12 of the Complaint and therefore, denies the allegations.

13. Defendant denies the allegations contained in Paragraph 13 of the Complaint.

14. Defendant denies the allegations contained in Paragraph 14 of the Complaint.

15. Defendant lacks sufficient information at this time to form a belief regarding the allegations contained in Paragraph 15 of the Complaint and therefore, denies the allegations.

16. Defendant admits the allegations contained in Paragraph 16 of the Complaint.

17. Defendant denies the allegations contained in Paragraph 17 of the Complaint.

18. Defendant denies the allegations contained in Paragraph 18 of the Complaint.

19. Defendant denies the allegations contained in Paragraph 19 of the Complaint.

X.
PRAYER FOR RELIEF

20. Defendant denies that Plaintiff is entitled to the relief requested.

IX.
DEMAND FOR JURY TRIAL

21. Defendant admits that Plaintiff has requested a trial by jury, but denies that Plaintiff is entitled to one because he agreed to binding arbitration in his contract with Defendant.

XI.
SPECIFIC DENIALS AND AFFIRMATIVE DEFENSES

22. Plaintiff's claims are subject to a binding arbitration agreement.

23. Plaintiff caused or contributed to the actions about which he now complains.

24. Plaintiff has unclean hands.

25. Plaintiff gave prior express consent to the actions of which he now complains and never revoked that consent.

26. Defendant's actions were at all times legitimate and lawful.

27. Defendant denies Plaintiff has sustained damages because of any unlawful act of Defendant, and/or that Plaintiff is entitled to the relief sought.

28. Plaintiff failed to mitigate his damages, if any.

29. Defendant complied with any and all purported obligations under the Telephone Protection Act.

30. Defendant was justified and acted reasonably in trying to collect a debt owed.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully prays that the instant claim be dismissed, that Plaintiff recovers nothing, that costs and attorney's fees are assessed against Plaintiff, and for such other and further relief to which it is entitled to receive.

Dated: January 28, 2015

Respectfully submitted,

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Michael A. Harvey

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CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2015, a true and correct copy of Defendant Conn Appliances, Inc.'s Original Answer was electronically filed with the Clerk for the Northern District of Texas via CM/ECF system.

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Attorney for Plaintiff

/s/ Michael A. Harvey

Michael A. Harvey